EDWARD C. SHEPARDSON

IBLA 80-347 Decided March 2, 1981

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers M 44742 (SD), M 45218 (SD), and M 45221 (SD) filed under the Mineral Leasing Act for Acquired Lands.

Affirmed in part; set aside and remanded in part; reversed and remanded in part.

1. Federal Property and Administrative Services Act -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Lands Subject to -- Surplus Property

   Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

2. Oil and Gas Leases: Acquired Lands Leases-Oil and Gas Leases: Discretion to Lease

   Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the

nature of a title abstract sufficient to allow BLM to determine the status of title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where an applicant declines to provide such information.

3. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Discretion to Lease -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Statement of Reasons -- Rules of Practice: Evidence

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

APPEARANCES: Edward C. Shepardson, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Edward C. Shepardson filed his noncompetitive oil and gas lease offer M 44742 (SD) on October 4, 1979, and lease offers M 45218 (SD) and M 45221 (SD) on November 23, 1979, in accordance with the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970), for 5,694.80 acres of acquired land located in T. 10 S., R. 2 E., Black Hills guide meridian, Fall River County, South Dakota.

Most of the lands in issue were transferred from the Secretary of Agriculture to the Secretary of War by Exec. Order No. 9197 issued July 9, 1942. There was no mineral reservation in this order. These lands became known as the Black Hills Army Depot.

On September 28, 1965, the Army reported these land as surplus property to the General Services Administration (GSA). On December 18, 1968, 3,040 acres of land in the Depot were transferred to the Forest Service. Another portion of these lands was transferred to the City of Edgemont, South Dakota, by contract of deed in November 1968, in which the United States reserved the minerals.

On December 31, 1979, the Montana State Office, Bureau of Land Management (BLM), issued its decision rejecting lease offer M 45221 (SD) in its entirety. The decision reads as follows:

> Oil and gas lease offer M 45221 (SD) Acquired was filed on November 23, 1979, subject to the terms of the Acquired Lands Mineral Leasing Act of August 7, 1947 (61 Stat. 913), as amended.
>
> The following lands are rejected because they are not shown on our records as having been acquired. If they were however, they are within the area of the Black Hills Army Depot Security Fence and as such are not subject to mineral leasing. These lands were determined to be surplus under the Surplus Property Act of October 3, 1944, and are not subject to leasing laws.
>
> T. 10 S., R. 2 E., B.H.M.
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> Sec. 9: NW 1/4, E 1/2 SW 1/4, SE 1/4
> Sec. 10: SW 1/4 SW 1/4, SE 1/4
> Sec. 11: NW 1/4 South and West of RR R/W, N 1/2 SW 1/4, SE 1/4 SW 1/4, SW 1/4 SE 1/4
> Sec. 20: SW 1/4, N 1/2 SE 1/4
>
> Our records do not indicate that the minerals on the following lands were acquired at the time the surface was acquired. Your offer is rejected as to these lands because we did not acquire the minerals and they are within the Black Hills Army Depot Security Fence and were determined to be surplus under the Surplus Property Act of October 3, 1944, and are not subject to the leasing laws.
>
> T. 10 S., R. 2 E., B.H.M.
>
> Sec. 9: W 1/2 SW 1/4

By decision of January 3, 1980, BLM rejected lease offer M 44742 (SD) subject to compliance in part. BLM stated:

> Oil and gas lease offer M 44742 (SD) Acquired was filed on October 4, 1979, subject to the terms of the Acquired Lands Mineral Leasing Act of August 7, 1947 (61 Stat. 913), as amended.
>
> The following lands are rejected because the minerals were not acquired by the United States. Even if they had been acquired, they would not be available for leasing because they are within the area of the Black Hills Army Depot Security Fence and all of this area has been determined to be surplus under the Surplus Property Act of

October 3, 1944, and is not subject to the leasing laws. See copy of 43 CFR 3101.2-1(a) attached.

T. 10 S., R. 2 E., B.H.M.

Sec. 8: NW 1/4, E 1/2 SE 1/4
Sec. 17: N 1/2, SW 1/4
Sec. 18: E 1/2 E 1/2

The lands described below are rejected because there is no evidence available to show that the United States acquired the minerals when they acquired the surface:

T. 10 S., R. 2 E., B.H.M.

Sec. 3: NE 1/4 South and West of
centerline of CB&Q RR (Lots 1, 2),
Lots 3, 4, N 1/2 S 1/2 NE 1/4,
S 1/2 NW 1/4, N 1/2 SW 1/4
Sec. 4: Lots 3, 4, S 1/2 NW 1/4
Sec. 5: Lots 1, 2, S 1/2 NE 1/4

Rejection of the lands described above in Sections 3, 4, and 5 is subject to your right to furnish a Minerals Memorandum of Title within 30 days from receipt of this Decision in which a determination may be made as to the mineral ownership in the United States.

We note that in its transmittal memorandum of February 4, 1980, to the Board which was attached to the case file on appeal, BLM made the following correction regarding M 44742 (SD):

Since receiving the appeal, we have reexamined all of the status information regarding this offer and find our decision was in error as to the lands described below:

That portion of Lots 1, 2, and the N 1/2 S 1/2 NE 1/4 lying south of the Black Hills Army Depot project fence, Lots 3, 4, S 1/2 NW 1/4, and N 1/2 SW 1/4, Sec. 3, T. 10 S., R. 2 E., B.H.M.

The information file attached, M 12990, includes a title opinion dated June 2, 1969, for two tracts of land identified as Tracts 11 and 12, containing the above described land, which states that all of the minerals were acquired by the United States and are available for leasing. The tract was transferred to the Department of Agriculture,

Forest Service, on December 12, 1968, and is under their jurisdiction.

The following lands are not shown on our records as having been acquired. If they were, however, they are within the area of the Black Hills Army Depot Security Fence and as such, are not subject to mineral leasing. These lands were determined to be surplus under the Surplus Property act of October 3, 1944, and are not subject to leasing laws.

T. 10 S., R. 2 E., B.H.M.

Sec. 2: That part of the W 1/2 South and West of the centerline of the CB&Q RR
Sec. 3: S 1/2 NE 1/4, E 1/2 SE 1/4
Sec. 19: NE 1/4, N 1/2 SE 1/4, SW 1/4 SE 1/4
Sec. 30: NW 1/4 NE 1/4

BLM's third decision issued January 4, 1980, in which it rejected lease offer M 45218 (SD) subject to compliance in part. BLM stated:

Oil and gas lease offer M 45218(SD) Acquired was filed on November 23, 1979, subject to the terms of the Acquired Lands Mineral Leasing Act of August 7, 1947 (61 Stat. 913), as amended.

The following lands are not shown on our records as having been acquired. If they were, however, they are within the area of the Black Hills Army Depot Security Fence and as such, are not subject to mineral leasing. Also, these lands were determined to be surplus under the Surplus Property Act of October 3, 1944, and are not subject to the leasing laws.

T. 10 S., R. 2 E., B.H.M.

Sec. 14: All
Sec. 15: N 1/2 N 1/2, SE 1/4 NE 1/4, S 1/2 NW 1/4, SW 1/4
Sec. 21: N 1/2, N 1/2 S 1/2

Sec. 22: SW 1/4 NE 1/4, NW 1/4,
N 1/2 SW 1/4, SE 1/4 SW 1/4,
E 1/2 SE 1/4
Sec. 27: That part North and West of
the Security Fence (NW 1/4
NE 1/4, NE 1/4 NW 1/4)

The lands described below are rejected because the minerals were not acquired by the United States. Even if they had been acquired, they would not be available for leasing because they are within the area of the Black Hills Army Depot Security Fence and all of this area has been determined to be surplus under the Surplus Property Act of October 3, 1944, and are not subject to the leasing laws. See copy of 43 CFR 3101.2-1(a) attached.

T. 10 S., R. 2 E., B.H.M.

Sec. 15: SW 1/4 NE 1/4, SE 1/4
Sec. 22: N 1/2 NE 1/4, SE 1/4,
NE 1/4, NE 1/4 SE 1/4

The following acquired lands are outside of the Security Fence. They are rejected however, because our records do not indicate that the minerals were acquired at the time the surface was acquired by the Department of Agriculture.

T. 10 S., R. 2 E., B.H.M.

Sec. 27: S 1/2 NE 1/4 and area
lying South and East of
the Security Fence
(NW 1/4 NE 1/4, NE 1/4
NW 1/4, S 1/2 NW 1/4)

Rejection of the lands described above in Section 27 is subject to your right to furnish a Minerals Memorandum of Title within 30 days from receipt of this Decision by which a determination may be made as to the mineral ownership in the United States.

In its statement of reasons, appellant makes the following contentions:

1. The Black Hills Army Depot has ceased to funtion [sic] and therefore the security fence location no longer serves any purpose and hasn't for several years. In point

of fact the fence where it physically exists is in private hands.

2. The lands in question are no longer surplus property. The surface in fact has been transfered [sic] by Purchase Agreement, dated 14 November 1968, from the General Services Administration to the City of Edgemont, South Dakota. The City of Edgemont has in turn transferred their rights to third parties. In said purchase agreement the following language can be found with respect to the mineral estate ". . . excepted from any conveyance pursuant to this agreement are all rights to oil, gas and other minerals, title to which is expressly reserved to the seller."

3. The Real Property Division of the GSA refers all inquiries for the leasing of these minerals to the BLM. They do not consider them surplus.

The logical question arises. If the land can be purchased, why can't the mineral estate be leased as Acquired Mineral rights? I further request an explanation of the logic of rejecting my application because of the existence on paper of a "security fence" when in fact there is no "security" fence.

Appellant included summaries of the chains of title for lands located outside of the security fence.

The State Office decisions deal with land in three categories: (1) Lands not shown as having been acquired but within the security fence; (2) minerals not acquired when surface land was acquired and such lands are within the security fence; and (3) lands outside security fence, but records do not indicate minerals were acquired when land was, and rejection subject to submission of memorandum of title.

[1] If, in fact, the lands in the first category were not acquired, they are not available for leasing under the Mineral Leasing Act for Acquired Lands. In any event, these lands are within the area of the Black Hills Army Depot Security Fence and determined to be surplus property. The Mineral Leasing Act for Acquired Lands specifically excepts on its face "lands * * * reported as surplus pursuant to the provisions of the Surplus Property Act of 1944." 30 U.S.C. § 352 (1976). This exception has been held equally applicable to the Federal Property and Administrative Services Act of 1949 (FPASA), as amended, 40 U.S.C. § 484(k)(2) (1979), which largely replaced the Surplus Property Act of October 3, 1944. Capitol Oil Corp., 33 IBLA 392 (1978); Paradox Oil & Gas Company, 22 IBLA 242 (1975); Elgin A. McKenna, Executrix, 74 I.D. 133 (1967), appeal dismissed sub nom. McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1969). Therefore, even if these lands

were acquired lands, they are not available for leasing under the Mineral Leasing Act for Acquired Lands, but only under the provisions of the FPASA, supra. Paradox Oil & Gas Company, supra; Elgin A. McKenna, Executrix, supra. Leasing under FPASA is by competitive bidding. 40 U.S.C. § 484(e)(1) (1979).

Appellant's argument that the lands should be leased under the Mineral Leasing Act for Acquired Lands because the Black Hills Army Depot has ceased and the "security fence" no longer exists to function is without merit. From the date on which the property was declared surplus, the Secretary had no authority to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands. Elgin A. McKenna, Executrix, supra at 137. This is true notwithstanding the fact that the land was transferred to the city of Edgemont with a mineral reservation in the United States. See Paradox Oil and Gas Company, supra.

Appellant contends that the Real Property division of GSA refers all inquiries for leasing these minerals to BLM and that GSA does not consider them surplus. Regardless of any apparent inconsistency which may have arisen due to GSA's actions, these lands were reported to GSA as surplus property, are within the jurisdiction of GSA, and may only be leased under the provisions of FPASA.

Regarding the second category, if the minerals were not acquired when the surface was acquired, the United States cannot lease them. Only acquired minerals owned by the United States are subject to leasing under the Mineral Leasing Act for Acquired Land, supra. Duncan Miller, 32 IBLA 137 (1977). Even if the minerals had been acquired, they could only be leased under FPASA as the surface lands were declared surplus.

As for the third category, BLM rejected certain lands because there was no evidence to show that the minerals were acquired when the surface was acquired. Some of these lands were not within the area of the Black Hills Army Depot and were not declared surplus property. BLM allowed appellant 30 days from receipt of the decisions to submit a Minerals Memorandum of Title by which a determination could be made as to whether the mineral ownership was in the United States. Failure to submit the information would result in rejection of the offer as to those lands.

Attached to appellant's statement of reasons were the chains of title which indicated that title to the minerals in certain lands within secs. 3 and 27 had been reserved in the United States. However, there were no documents to prove this.

Uncertainty regarding the status of the ownership of mineral deposits is sufficient grounds for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. Don Jumper, 24 IBLA 218, 219 (1976); Gas Producing Enterprises, Inc., 15 IBLA 266, 268 (1974).

In its decision BLM afforded appellant the opportunity to present information relating to the title of the minerals but BLM was not specific in stating what information it requested, asking only for a "Minerals Memorandum of Title."

[2] Where title to a tract of acquired land which is the subject of an oil and gas lease application is in doubt, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Jean Oakason, 27 IBLA 41, 43 (1976), Don Jumper, supra at 219; see Gas Producing Enterprises, Inc., supra at 268. Where the BLM has insufficient title information with respect to mineral title in acquired lands, it may properly require the lease offeror to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow the BLM to determine the status of title to the oil and gas in the lands for which the lease application was filed. Jean Oakason, supra; Jean Oakason, 22 IBLA 311, 312 (1975); Jean Oakason, 22 IBLA 33, 35 (1975). Further, rejection of the application for lease is proper if the offeror fails to furnish information which helps to remove doubt as to title. Id.

[3] BLM's decision to reject the lease offer if appellant did not furnish the required information was not improper at the time that it was made in view of the insufficiency of the evidence of title. However, appellant has filed additional evidence on appeal. It is not the function of this Board to adjudicate applications on the basis of evidence submitted for the first time on appeal. Jean Oakason, 27 IBLA 41, 44 (1976). See United States v. Gary C. Fichtner, 24 IBLA 128, 130 (1976); United States v. C. V. Hallenbeck, 21 IBLA 296, 302 (1975). However, it may be appropriate to remand an application for further consideration where new evidence is presented indicating that appellant may be entitled to favorable action on his application. Jean Oakason, 27 IBLA 41 (1976). See Lon Philpott (On Reconsideration), 16 IBLA 285 (1974). Such a course of action is appropriate in this case where appellant has provided information pertinent to mineral title affecting certain lands in sec. 27 when requested to do so and appellant was not advised in the decision of the specific nature of the title information required. Accordingly, we remand the case.

In connection with the submission of the memorandum of title affecting secs. 3 and 27, on remand, BLM should advise appellant of the specific information required and afford appellant a reasonable period of time to submit such evidence.

Regarding the lands in sec. 3 which involve M 44742 (SD), the transmittal memorandum indicates that the lands were erroneously rejected and that they are in the ownership of the United States and are available for leasing. That portion of BLM's decision rejecting these lands is reversed and the case remanded to BLM for issuance of a lease if appellant has met all other requirements.

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, in accordance with the above, the decisions are set aside and remanded with respect to those lands for which appellant must furnish title information. The decision in M 44742 (SD) is reversed and remanded regarding the lands in sec. 3. The decisions are affirmed as to all other lands.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge